Supreme Court, U.S.
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No. 85-1211

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

KONDIAN R. RAJARAM,

Appellant,

v.

A. S. ABELL PUBLISHING COMPANY,

Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF MARYLAND

MOTION OF APPELLEE TO DISMISS OR AFFIRM

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MOTION OF APPELLEE TO DISMISS OR AFFIRM

Appellee moves this Court to dismiss this appeal or, in the alternative, to affirm the judgment of the Court of Appeals of Maryland. The grounds for this Motion, in accordance with Supreme Court Rule 16, are as follows: (1) the appeal is not within this Court's jurisdiction because

there is no "final judgment" here; (2) the appeal is not within the Court's appellate jurisdiction, and this case clearly does not warrant discretionary review under this Court's certiorari jurisdiction; and (3) any federal questions in Appellee's Jurisdictional Statement are insubstantial, were not timely or properly raised, and were not expressly passed on below, and the judgment rests on an adequate non-federal basis.

I.

NATURE OF THE CASE

Appellant has sued Appellee in Maryland State Court for allegedly failing to comply with a 1977 arbitration award between Appellee and Appellant's union. When Appellee inadvertently failed to respond to Appellant's lawsuit, default orders were issued under Maryland law against Appellee. Eventually, these default orders were set aside,[1] and Appellee moved in the trial court to dismiss the lawsuit. That motion to dismiss is still pending in State Court.

On April 10, 1985, Appellant appealed the trial court's order vacating the default to the Maryland Court of Special Appeals. On June 26, 1985, however, the Court of Special Appeals dismissed the appeal under Maryland Rule 1035(b)(1),[2] which provides that an appeal that "is not allowed by law" should be dismissed. Appellant then petitioned the Court of Appeals of Maryland for a writ of

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[1] *See* Order of March 12, 1985, reprinted in Appellant's Jurisdictional Statement at pp. 11a-13a.

[2] *See* Order of June 26, 1985, reprinted in Appellant's Jurisdictional Statement at p. 18a-19a. Before the Maryland Court of Special Appeals, Appellee argued that the trial court's order vacating the default was not a final appealable judgment under Maryland law. *See, e.g., Mitchell Properties, Inc. v. Real Estate Title Co., Inc.*, 62 Md. App. 473, 482, 490 A.2d 271, 276 (1985).

certiorari. That petition was denied on October 21, 1985, "as there has been no showing that review by certiorari is desirable and in the public interest."[3] This appeal followed.

II.

ARGUMENT

A. THE APPEAL IS NOT WITHIN THIS COURT'S JURISDICTION BECAUSE THERE IS NO "FINAL" JUDGMENT HERE.

Before this Court, Appellant purports to appeal from the dismissal of a State Court appeal — an appeal that was dismissed because, under Maryland law, there was no final judgment. Since that dismissal is not a final judgment for purposes of this Court's jurisdiction, though, this appeal must be dismissed.

This Court's "jurisdiction to review a state court judgment is confined by long-standing statute to one which is final." *Market Street Ry. Co. v. R.R. Comm'n. of California,* 324 U.S. 548, 551 (1945). To be final, the State Court judgment must be "an effective determination of the litigation and not of merely interlocutory or intermediate steps therein. It must be the final word of a final court." *Id.*

It is obvious that, under *Market Street,* there is no final judgment here. In this respect, Appellee's motion to dismiss Appellant's claims is currently pending before a Maryland trial court, and the merits of Appellant's claims have never been considered by *any* Maryland appellate court. Consequently, because there is no "final word of a final court" in this case, the appeal must be dismissed. *Market Street, supra,* 324 U.S. at 551.

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[3] *See* Order of October 21, 1985, reprinted in Appellant's Jurisdictional Statement at p. 20a.

B. THE APPEAL IS NOT WITHIN THIS COURT'S APPELLATE JURISDICTION, AND THIS CASE CLEARLY DOES NOT WARRANT REVIEW PURSUANT TO THIS COURT'S CERTIORARI JURISDICTION.

This Court only has appellate jurisdiction to review State Court decisions when "the validity of a federal treaty or statute has been drawn in question and the state court has held it *invalid;*" and when "the validity of a state statute has been drawn in question and the state court has held it *valid.*" R. Stern and E. Gressman, *Supreme Court Practice,* at p. 157 (5th ed. 1978) (emphasis in the original). Even if there were a final judgment here, neither of the two situations described above is present in this case. Consequently, this Court lacks appellate jurisdiction over Appellant's appeal.

Under 28, U.S.C. § 2103, Appellant's appeal should "be regarded and acted on as a petition for writ of certiorari. . . ." Nevertheless, this case clearly does not warrant review by this Court pursuant to its certiorari jurisdiction. Consequently, if the appeal is treated as a certiorari petition, it should be denied forthwith.

C. THIS CASE DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION, ANY FEDERAL QUESTIONS IN THE JURISDICTIONAL STATEMENT WERE NOT TIMELY OR PROPERLY RAISED AND WERE NOT EXPRESSLY PASSED ON BELOW, AND THE JUDGMENT RESTS ON AN ADEQUATE NON-FEDERAL BASIS.

Under Supreme Court Rule 16.1(b), an appeal from a State Court decision must be dismissed when the case "does not present a substantial federal question;" when "the federal question sought to be reviewed was not timely or properly raised and was not expressly passed on;" or when "the judgment rests on an adequate non-federal basis." It is manifest from Appellant's Jurisdictional Statement that this appeal presents all three of the

grounds for dismissal specified in Rule 16.1(b). Consequently, wholly apart from the jurisdictional defects noted previously in this Motion, this appeal should be dismissed or (alternatively) the judgment sought to be reviewed should be affirmed under Rule 16.1(d).

The Jurisdictional Statement presents no substantial federal questions. Instead, the seven Questions Presented for Review in the Jurisdictional Statement present a scatter-gun potpourri of insignificant issues, some of which arise solely under Maryland law. Moreover, any federal questions presented in the Jurisdictional Statement were not timely or properly raised and were not expressly passed on by any Maryland appellate court. This is manifest from the fact that, prior to briefing on the merits, the appeal was dismissed in State Court, under Maryland law, because there was no final judgment. Finally, the judgment at issue here rests on an adequate non-federal basis — namely, the fact that there was no final judgment under Maryland law. For all of these reasons, this appeal should be dismissed or the judgment sought to be reviewed should be affirmed. Alternatively, if this appeal is treated as a petition for writ of certiorari, these reasons demonstrate that the petition should be denied.

III.

CONCLUSION

Based upon the foregoing, Appellee urges that this appeal should be dismissed or the judgment sought to be reviewed should be affirmed. If the Court treats this appeal as a petition for writ of certiorari under 28 U.S.C. § 2103, though, the petition should be denied. Finally, in view of the patently frivolous nature of this appeal, the Court should award Appellee double costs and attorneys fees (*inter alia*) under 28 U.S.C §§ 1912, 1927, and 2103 and under Supreme Court Rules 49 and 50. In accordance with 28 U.S.C. § 1927, Appellant's attorney should be required to satisfy personally the amount of this award.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that there is only one party (the Appellant) that needs to be served with the foregoing Appellee's Motion to Dismiss or Affirm. Moreover, I certify that this party was served by mailing three copies of said Motion, certified mail, return receipt requested, to Edward J. Makowski, Esquire, 1746 Eastern Avenue, Baltimore, Maryland 21231, Counsel for Appellant.

Jeffrey Peabody Ayres Date

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